



**Court Holiday Schedule.** The Bankruptcy Court will be closed **Friday, December 24, 2004**, and **Friday, December 31, 2004**. In addition, the court will be closed on Thursday, December 16, from 11:30 a.m. to 12:30 p.m. to permit the staff to attend a holiday lunch together.

**PACER Fee Increase.** The Judicial Conference of the United States recently approved a PACER fee increase from 7 cents per page to 8 cents per page. The fee increase is effective January 1, 2005. The fee for viewing a single document will remain capped at 30 pages so the maximum charge per document will increase from \$2.10 to \$2.40. Please note that this fee cap does not apply to viewing the docket itself. In a large case (such as Hawaiian Airlines), viewing the entire docket may result in a charge exceeding \$20.00. PACER users are urged to narrow their docket search by entering either a range of filing dates or document numbers.

**CM/ECF Version 2.6.** The court will be upgrading the CM/ECF application in late December. Installation of the latest release, Version 2.6, is necessary to implement the PACER fee increase. In addition to various technical modifications, users should see more details in the information provided in their credit card receipts for filing fees. The transaction receipt for payments will now list individual case numbers and individual fees with descriptions, in addition to the total payment.

**Debtor Wishing to Change Venue?** You may be able to use a new form "Debtor's Motion to Transfer Case" that provides notice and a 15-day deadline to object. Form **hib\_1014** may be downloaded from the court's website.

**Amended Procedures and Guidelines.** Attached to this newsletter are administrative orders providing for new or amended procedures and guidelines concerning professional fees in Chapter 7 and Chapter 11 cases, certain motions in Chapter 13 cases, and compliance with the Servicemembers Civil Relief Act of 2003 in requesting entry of orders granting relief from stay by default. The attachments show proposed deletions in ~~strikeout~~; new text is **highlighted**. These provisions will become effective **January 1, 2005**.



❁ **HAPPY HOLIDAYS!** ❁

➤ **Fee Guidelines for Professionals and Trustees.** Proposed changes include conditioning approval of fees on the timely filing of monthly operating reports, modifying the provisions on air travel time, parking and automotive expenses, and requiring proration of services among cases and approximate conversion figures for amounts billed in foreign currencies. The short form application for a trustee's professional seeking less than \$5,000 has been revised.

➤ **Chapter 13 Procedures.** Proposed changes concern motions to sell and motions to obtain credit or incur debt. Refinancing may be approved ex parte on certain conditions.

➤ **Relief from Stay Orders.** The court has determined that a party seeking an order granting relief from stay by default must provide a declaration as to the respondent's military service status. New form **hib\_4001-1dec** will be required prior to entry of an order granting an unopposed motion for relief from the automatic or codebtor stay.

Please email any comments about the proposed changes to [michael\\_dowling@hib.uscourts.gov](mailto:michael_dowling@hib.uscourts.gov) by December 27, 2004.

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

In re:

COMPENSATION FOR SERVICES  
AND REIMBURSEMENT FOR  
EXPENSES FOR PROFESSIONALS  
AND TRUSTEES.

Administrative Order

Dated: \_\_\_\_\_

**ORDER ADOPTING GUIDELINES FOR COMPENSATION  
AND REIMBURSEMENT FOR PROFESSIONALS AND TRUSTEES**

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2016-1, the court hereby adopts the attached Guidelines for Compensation and Reimbursement for Professionals and Trustees. Unless the court orders otherwise, the provisions of these guidelines govern all applications filed on and after January 1, 2005, for an order allowing or awarding compensation for services or reimbursement for expenses under 11 U.S.C. § 330.

**DRAFT 12/13/04**

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII

**GUIDELINES FOR COMPENSATION  
AND EXPENSE REIMBURSEMENT OF FOR PROFESSIONALS AND TRUSTEES**

~~The following guidelines are promulgated pursuant to LBR 2016-1(a) and govern the most significant issues related to applications for compensation and expense reimbursement. The guidelines cover the narrative portion of an application, time records and expenses. They apply in their entirety to professionals seeking compensation under 11 U.S.C. § 330 in all pending cases, and, where indicated, to Chapter 7 and Chapter 11 trustees in applications for compensation and expense reimbursement filed on or after July 1, 1999. The guidelines are not intended to cover every situation or to limit in any way the court's authority in determining, pursuant to 11 U.S.C. § 330, whether requests for compensation are reasonable, and that services and expenses are actual and necessary. The court is advised that compliance with these guidelines will satisfy the requirements of the United States Trustee.~~

~~———— Applicants should note that LBR 2016-1(b) requires that every application for compensation and reimbursement of expenses also must include a concise summary sheet of information specified in that rule. A sample summary sheet is available from the Clerk's office.~~

**1. Applicability of 11 U.S.C. § 330(a)(3).** All applications for compensation for services are subject to a review for reasonableness under 11 U.S.C. § 330(a)(3) unless the order approving the employment of the applicant expressly states that the employment is authorized under 11 U.S.C. § 328(a).

**2. Application Format.** An application for compensation or reimbursement shall provide the information required under Fed. R. Bankr. P. 2016(a) in a format that includes:

- (a) The application with a narrative description of services as described more fully below;
- (b) A summary sheet that substantially conforms to the court-issued form (**hib\_2016-1b** or **hib\_2016-1b13**);
- (c) A declaration by a Certifying Professional, as described in Guideline 5;
- (d) Detailed time records of services rendered; and
- (e) A list of itemized expenses.

The applicant shall also submit a declaration by the trustee or a representative of the entity employing the applicant stating whether or not the application has been reviewed and approved by the trustee or other entity, and whether or not there appear to be sufficient funds in the estate for the payment of the amounts being requested and all other accrued and anticipated administrative expenses.

**I 3. Guidelines Applicable To Attorneys And Other Professionals Narrative Description of Services.**

**The Narrative**

- † (a) Employment and Prior Compensation. The application ~~should~~ **must** disclose the date of the order approving **the** applicant's employment and ~~contain a clear statement itemizing the date of each prior request for compensation, the amount requested, the amount approved,~~ and the amount paid.

2. (b) Case Status. ~~With respect to interim requests, the~~ The application ~~should~~ must briefly explain the history and the present posture of the case.

In Chapter 11 cases, the information furnished ~~should~~ must describe the general operations of the debtor; whether the business of the debtor, if any, is being operated at a profit or loss; the debtor's cash flow; whether a plan has been filed, and if not, what the prospects are for reorganization and when it is anticipated that a plan will be filed and a hearing set on the disclosure statement.

In Chapter 7 cases, the application ~~should~~ must contain a report of the administration of the case including the disposition of property of the estate; what property remains to be disposed of; why the estate is not in a position to be closed; and whether it is feasible to pay an interim dividend to creditors.

In both Chapter 7 and Chapter 11 cases, the application ~~should~~ must state the amount of money on hand in the estate and the estimated amount of other accrued ~~and anticipated~~ expenses of administration. On applications for interim fees, the applicant should orally supplement the application at the hearing to inform the court of any changes in the current financial status of the debtor's estate since the filing of the application.

With respect to final requests, applications should meet the same criteria except, where a Chapter 7 Trustee's final account is being heard at the same time, the financial information in the final account need not be repeated.

Fee applications submitted by special counsel seeking compensation from a fund generated directly by their efforts, auctioneers, real estate brokers, ~~business consultants, expert witnesses,~~ or appraisers ~~do not have~~ are not required to ~~comply with the above~~ provide a report on case status. For all other applications, when more than one application is noticed for the same hearing, they may, to the extent appropriate, incorporate by reference the narrative history furnished in a contemporaneous application.

- (c) Monthly Operating Reports. If monthly operating reports are required to be filed, the narrative portion of an application by a trustee or general counsel for a trustee or debtor in possession must state whether the monthly operating reports are current and being filed timely. The court may decline to consider an application for compensation by the trustee or a professional employed by the trustee or debtor in possession if the reports are not current or not being filed timely.

3. (d) Project Billing. In any application exceeding \$10,000, or when the professional's anticipated services for the case will exceed \$20,000, the narrative ~~should~~ must categorize by subject matter and separately discuss each professional project or task. All work for which compensation is requested should be in a category. Miscellaneous items may be included in a category such as "Case Administration." (Such a miscellaneous category ~~generally~~ should not ~~generally represent~~ include more than 15% of the fee request.) The professional may use reasonable discretion in defining projects for this purpose, provided that the application provides meaningful guidance to the court as to the complexity and difficulty of the task, the professional's efficiency, and the results achieved. (A separate category should generally be created for a project when the fees attributable to that project exceed \$5,000.) With respect to each project or task, the number of hours spent and the amount of compensation and expenses requested should be set forth at the conclusion of the discussion of that project or task. Please also note the requirements in ~~Guideline 11~~ these guidelines relating to time records by project.

4. (e) Billing Summary. Hours and total compensation requested in each application should be aggregated and itemized as to each professional and paraprofessional who provided compensable services.
5. (f) Paraprofessionals. Fees may be sought for paralegals, professional assistants and law clerks only if identified as such and if the following requirements are met:
- (a)(i) The services for which compensation is sought would have had to be done by the professional if not done by the paraprofessional, and would have been compensable under these guidelines;
  - (b)(ii) ~~The person who performed the services is specially trained or is a law school student, and is not primarily a~~ The services for which compensation is sought require special skills not held by a qualified legal secretary or clerical worker; and
  - (c)(iii) The application includes a resume or summary of the paraprofessional's qualifications.
6. (g) Preparation of Application. Reasonable fees for preparation of a fee application may be requested. The aggregate number of hours spent, the amount requested and the percentage of the total request which the amount represents must be disclosed. If the actual time spent will be reflected and charged in a future fee application, this fact should be stated ~~but~~ and an estimate nevertheless provided.
7. (h) Client Review of Billing Statement. A debtor in possession, trustee, or official committee shall exercise reasonable business judgment in monitoring the fees and expenses of the estate's professionals. In any case where the charge for the professional's anticipated services will exceed \$10,000, billing statements should be sent to the employing entity (debtor in possession, trustee or official committee) on a monthly basis. A fee application shall be ~~sent~~ transmitted to the employing entity at least 28 days prior to the scheduled hearing date. before it is filed with The application shall be transmitted with a cover letter that contains the following statement: "The court's Guidelines for Compensation and Expense Reimbursement of for Professionals and Trustees provide that a debtor in possession, a trustee, or an official committee must exercise reasonable business judgment in monitoring the fees and expenses of the estate's professionals. We invite you to discuss any objections, concerns or questions you may have with us. The Office of the United States Trustee will also accept your comments. The court will also consider timely filed objections by any party in interest at the time of the a hearing on the application."

**4. Summary Sheet.** Every application for compensation and reimbursement shall include a summary sheet providing the information required under LBR 2016-1(b) using a form that substantially conforms to a court-issued form (**hib\_2016-1b** in a Chapter 7 or Chapter 11 case or **hib\_2016-1b13** in a Chapter 13 case). The court may decline to consider an application for compensation that does not include a summary sheet.

**85. Certification.** Each application for compensation and expense reimbursement must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these guidelines ("Certifying Professional") that: (a) the Certifying Professional has read the application; (b) to the best of the Certifying Professional's knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with these guidelines, except as specifically noted in the certification application; and (c) the compensation and expense reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by the applicant and

generally accepted by the applicant's clients.

9. ~~Chapter 7 Short Form Application.~~ Where the professional is filing only a final request for compensation and expense reimbursement in a Chapter 7 case and the request does not exceed \$5,000 for the case, the professional has the option of utilizing the approved Chapter 7 form application. Copies of the approved short form application are available in the Clerk's office. Use of the approved short form shall satisfy the summary sheet requirement of LBR 2016-1(b).

## **6. Short Forms and Exceptions.**

- (a) Chapter 7. A professional employed under 11 U.S.C. §§ 327 or 1103 seeking a final award of compensation and reimbursement in an amount not to exceed \$5,000 may use a short form application that substantially conforms to the court-issued form (**hib\_2016-1sf**), in lieu of filing an application with narrative and separate summary sheet.
- (b) Chapter 13. An attorney for the debtor in a Chapter 13 case electing to seek the award, allowance, and payment of compensation and reimbursement for expenses through plan confirmation under the Chapter 13 Attorney Fee Guidelines is not subject to these Guidelines for Compensation and Reimbursement for Professionals and Trustees.

## **7. Time Records.**

10. (a) Time Records Required. All professionals, ~~except auctioneers, real estate brokers, appraisers and those employed on a contingency fee basis~~ **other than those employed under 11 U.S.C. § 328(a) for a flat fee**, must keep accurate contemporaneous time records. ~~The court may, however, specifically direct that time records be kept on a contingent fee matter.~~
11. (b) Time Records By Project. In any application exceeding \$10,000, or where the professional's anticipated services for the case will exceed \$20,000, time records should be kept by categories as described in Paragraph 3 **these guidelines** relating to Project Billing ~~above~~. Time records should be sorted, assembled, and attached to the application by category corresponding to the discussion in the narrative.
12. (c) Increments. Professionals are required to keep time records in minimum increments no greater than 6 minutes. Professionals who utilize a minimum billing increment greater than .1 hour are subject to a substantial reduction of their requests.
- (d) Proration. Time claimed for attendance at hearings, meetings of creditors, or other services involving more than one case must be prorated. For example, an attorney appearing in court for matters calendared for the same time period but involving separate cases must prorate the billable time accordingly.
13. (e) Descriptions. At a minimum, the time entries should identify the person performing the services, the date performed, what was done and the subject involved. Mere notations of telephone calls, conferences, research, drafting, etc., without identifying the matter involved, may result in disallowance of the time covered by the entries.
14. (f) Clumping. If a number of separate tasks are performed on a single day, the fee application should disclose the time spent for each such task (i.e., no "grouping" or "clumping").



15. (g) Conferences. Professionals should be prepared to explain time spent in conferences with other professionals or paraprofessionals in the same firm. Failure to justify this time may result in disallowance of all fees related to such conferences.
16. (h) Multiple Professionals. Professionals should be prepared to explain the need for more than one professional or paraprofessional from the same firm at the same court hearing, deposition or meeting. Failure to justify this time may result in compensation for only the person with the lowest billing rate.
17. (i) Airplane Travel Time. ~~Airplane travel time is not compensable, but work actually done during a flight is compensable. If significant airplane travel time is expected in a case, specific guidelines should be obtained for that case.~~ A reasonable amount of time for actual, necessary air travel is compensable, but compensable travel time does not include (i) work time during travel which is billed separately, (ii) time spent on work for another client while traveling, or (iii) time outside the applicant's customary working days and hours. If the travel also involves another case or client, the travel time must be prorated.
18. (j) Administrative Tasks. Time spent in addressing, stamping and stuffing envelopes, filing, photocopying or "supervising" any of the foregoing is not compensable, whether performed by a professional, paraprofessional or secretary.
19. (k) Privilege or Excise Taxes on Compensation. Amounts attributable to privilege or excise taxes, but not income taxes, payable on receipts for compensation may be included in requests for compensation if customarily charged to nonbankruptcy clients.

## 8. Expenses.

20. (a) Firm Practice. All expenses for which reimbursement is sought must be of the kind, and at the least expensive rate, the applicant customarily charges nonbankruptcy clients. A firm's customary charges remain subject to a determination that the charges are actual and necessary, pursuant to 11 U.S.C. § 330.
21. (b) Actual Cost. ~~Is defined as~~ The itemized expense must be the amount paid to a third party provider of goods or services without enhancement for handling or other administrative charge.
22. (c) Documentation. Records must ~~Must~~ be retained and made available upon request for all expenditures in excess of \$50.00. Where possible, receipts should be obtained for all expenditures.
23. (d) Office Overhead. Not reimbursable. Overhead includes: secretarial time, secretarial overtime, word processing time, charges for after-hour and weekend air conditioning and other utilities, and cost of meals or transportation provided to professionals and staff who work late or on weekends.
24. (e) Computerized Research. Actual cost.
25. (f) Paraprofessional Services. ~~May~~ These services may be compensable ~~compensated as a paraprofessional under § 330 but may not be charged or reimbursed as an expense.~~
26. (g) Professional Services. A professional employed under 11 U.S.C. §§ 327 or 1103 may not employ, and charge as an expense, another professional (e.g., special litigation counsel employing an expert

witness) unless the employment of the second professional is approved by the court prior to the rendering of services.

27. (h) Photocopies (Internal). Charges must be disclosed on an aggregate and per page basis. If the per page cost exceeds \$.20, the professional must demonstrate to the satisfaction of the court, with data, that the per page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the copy machine and supplies therefor including the space occupied by the machine, but not including time spent in operating the machine.
28. (i) Photocopies (Outside). Actual cost.
29. (j) Postage. Actual cost.
30. (k) Overnight Delivery. Actual cost where shown to be necessary.
31. (l) Messenger Service. Actual cost where shown to be necessary. An in-house messenger service is reimbursable but the estate cannot be charged more than the cost of comparable services available outside the firm and only where such service is customarily charged to nonbankruptcy clients.
32. (m) Facsimile Transmission. Actual cost of telephone charges for outgoing transmissions are reimbursable. In lieu of actual telephone charges, outgoing faxes are reimbursable on a per page basis, at a rate not exceeding \$1.00 for the first page and \$.20 for each additional per page. Incoming faxes are reimbursable on a per page basis, at a rate not exceeding \$.20 per page. If the per page costs exceed the limits noted above, the professional must demonstrate to the satisfaction of the court, with data, that the per page cost represents a good faith estimate of the actual cost of the copies. The machine operator's time is not reimbursable.
33. (n) Long Distance Telephone. Actual cost.
34. (o) Air Transportation. Air travel expense is limited expected to be at regular coach or economy fare for all flights. Automotive travel expense is limited to the actual cost of rental of an appropriate vehicle, together with insurance and fuel costs associated with the rental.
- (p) Parking. Actual cost except for parking at the applicant's principal place of business and, for applicants whose principal place of business is on the island of Oahu, parking while attending court or meetings of creditors.
35. (q) Hotels. Due to wide variation in hotel costs in various cities, it is not possible to establish a single guideline for this type of expense. All persons will be required to exercise discretion and prudence in connection with hotel expenditures.
36. (r) Meals-Travel. The cost of lunches while a party is away from the island or state where the party's principal business is located is not reimbursable. Reimbursement may be sought for the reasonable cost of breakfast and dinner while traveling.
37. (s) Meals-Working. Working meals at restaurants or private clubs are not reimbursable. Reimbursement may be sought for working meals only where food is catered to the professional's office in the course of a meeting with clients, such as a Creditors Committee, for the purpose of allowing the meeting to continue through a normal meal period.



- 38. (t) Amenities. Charges for entertainment, alcoholic beverages, newspapers, dry cleaning, shoe shines, etc., are not reimbursable.
- 39. (u) Filing Fees. Actual cost.
- 40. (v) Court Reporter Fees and Transcripts. Actual cost.
- 41. (w) Witness Fees. Actual cost.
- 42. (x) Process Service. Actual cost.
- 43. (y) Title and UCC Searches. Actual cost.
- 44. (z) Privilege or Excise Taxes on Costs. Amounts attributable to privilege or general excise taxes, but not income taxes, payable on receipts for reimbursement of the above expenses are reimbursable to the extent that the taxes will be paid to the taxing authority.

**9. Amounts Billed in Foreign Currency.** An application for compensation for services and reimbursement of expenses billed in a foreign currency must state the total amounts being requested in United States Dollars (e.g., compensation in the amount of \$10,000.00 Singapore Dollars (approximately \$6,050.00 USD) and reimbursement for expenses in the amount of \$1,500.00 Singapore Dollars (approximately \$900.00 USD)). A proposed order approving an application must also state the approximate equivalent amounts in United States Dollars.

#### **H.10. Guidelines Applicable To Trustees.**

~~Chapter 7 and Chapter 11 trustees are responsible for maintaining contemporaneous time records in every case. Time records must be maintained by project categories. At a minimum, project categories should include: (1) Assets Recap (asset analysis and recovery/asset disposition); (2) Investigation of Financial Affairs of the Debtor; (3) Claims Administration and Objections; and (4) Fee Applications. Trustees may add additional categories at their discretion. Trustees are also subject to Guidelines 4, 5 (subject to § 326), 10, 12, 13 and 20 - 44 dealing with expenses.~~

- (a) Narrative Description of Services. In cases in which the trustee's compensation request is anticipated to be \$5,000 or less, the trustee may submit a brief narrative description of the services performed and a statement of the amount of time spent. In cases in which the final compensation exceeds \$5,000, or where an interim request is made and it is anticipated that the total compensation requested will exceed \$5,000, the trustee's application must include ~~time records as well as a~~ narrative description of the services performed as well as time records in compliance with these and ~~comply with the guidelines referenced above.~~
- (b) Time Records and Project Categories. ~~Chapter 7 and Chapter 11 trustees~~ Trustees in Chapter 7 and Chapter 11 cases shall maintain ~~are responsible for maintaining contemporaneous time records in every case~~ of services rendered. Time records must be maintained by project categories. At a minimum, project categories should include: (1) Assets Recap (asset analysis and recovery/asset disposition); (2) Investigation of Financial Affairs of the Debtor; (3) Claims Administration and Objections; and (4) Fee Applications. Trustees may add additional categories at their discretion. Chapter 7 panel trustees are excused from the requirement to prorate services and expenses among multiple cases where one or more of the cases involved has no assets for distribution.

- (c) **Limitation on Compensation by Trustee.** In all cases where the trustee is seeking compensation for services after disbursing or turning over moneys to parties in interest, including holders of secured claims, the request shall include the calculation of the statutory limitation in 11 U.S.C. § 326(a). The request shall also provide a calculation of the effective hourly rate of the compensation request, being the amount requested for compensation divided by the actual hours expended for the trustee's services. A trustee is expected to exercise reasonable billing judgment if requesting the maximum amount permitted under the statutory limitation. The trustee may include as part of the compensation request an amount attributable to liability for privilege or excise taxes, but subject to the statutory limitation imposed by 11 U.S.C. § 326(a).

~~Guidelines applicable to trustees are effective for all requests for compensation and expense reimbursement filed on or after July 1, 1999.~~

Attorney or Party Name, Address, Phone, Fax, Email:		For court use only	
<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>		Case No.:	Chapter 7
In re (Debtor(s)):		<u>Hearing:</u> Date: Time:	<u>Non-Hearing:</u> (Hearing will be set if objection filed)
<b><u>FINAL APPLICATION BY CHAPTER 7 PROFESSIONAL FOR AWARD OF COMPENSATION AND/OR REIMBURSEMENT FOR EXPENSES; CERTIFICATION; EXHIBIT "A"</u></b>			

The undersigned hereby seeks an award of compensation for services and/or reimbursement for expenses under 11 U.S.C. § 330 and the Guidelines for Compensation and Reimbursement for Professionals and Trustees. This is a first and final application for a total amount which does not exceed \$5,000 and detailed billing time records are attached as Exhibit "A".

Applicant				
Capacity				
Date Appointed				
Billing Period	From:		To:	
Amounts Requested (including any Hawaii G.E.T.)	Fees:	\$	Expenses:	\$
Estate Funds	Total Receipts:	\$	Present Balance on Hand:	\$
Brief description of services:				

Request details:

Professional	Position	Hourly rate	Hours	Fees
				\$
				\$
				\$
				\$
				\$
				\$
Totals:				\$

CERTIFICATION

The undersigned declares under penalty of perjury that:

1. I am familiar with the facts underlying this application and that the information stated in this application is true and correct to the best of my knowledge;
2. The billing statements attached as Exhibit "A" are true and correct to the best of my knowledge;
3. The applicant has not been paid or promised any compensation from any other source for services rendered in connection with this case;
4. The applicant has not entered into any agreement or understanding with any other entity for the sharing of compensation received or to be received for services rendered in connection with this case;
5. The compensation and expenses requested in this application were billed at rates no less favorable than those customarily billed by the applicant and generally accepted by the applicant's clients; and
6. To the best of my knowledge, information, and belief, the compensation and reimbursement requested in this application is in conformity with the Guidelines for Compensation and Reimbursement for Professionals and Trustees adopted by the United States Bankruptcy Court for the District of Hawaii, except to the extent particularly set forth elsewhere in this application.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(for) Applicant

*[Attach detailed billing records as Exhibit "A". Use of this form is limited to requests not exceeding \$5,000 and relieves the applicant from the requirement to provide a narrative and separate summary sheet.]*

Attorney/Party Name, Address, Phone, Fax, E-mail:			For court use only	
<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>			Case No.	
In re:			Chapter	
Debtor(s).			Related Docket No.: <i>[if application filed separately]</i>	
<b>LBR 2016-1(b) SUMMARY SHEET</b>				
Application for Compensation / Expenses:		Interim _____ (1 <sup>st</sup> , 2 <sup>nd</sup> , etc.)		Final
Applicant:				
Capacity:				
Date of Order Authorizing Employment:				
Period for this Request <i>[e.g., 1/1/2000 - 12/31/2002]</i>				
Amt Rec'd Prepetition:	\$	Client Trust Acct Balance:	\$	
Previous Amounts Awarded by Court:		Fees: \$	Expenses: \$	
Previous Amounts Received:		Fees: \$	Expenses: \$	
<b>Current Request (including any Hawaii excise taxes):</b>		<b>Fees: \$</b>	<b>Expenses: \$</b>	
Availability of Funds - Applicant believes that there are sufficient funds to pay this request and all other accrued and anticipated administrative expenses:			Yes	No
Professional	Position	Hourly Rate	Hours	Fees
				\$
				\$
				\$
				\$
				\$
				\$

*[Attach additional pages as necessary.]*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Applicant

Attorney/Party Name, Address, Phone, Fax, E-mail:			For court use only	
<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>			Case No. Chapter 13	
In re:  <div style="text-align: right;">Debtor(s).</div>			Hearing Date: <div style="text-align: center;">Time:</div> Related Docket No.: <i>[if application filed separately]</i>	
<b>LBR 2016-1(b) SUMMARY SHEET - CHAPTER 13 DEBTOR'S ATTORNEY</b>				
Application for Compensation / Expenses:		Interim _____ (1 <sup>st</sup> , 2 <sup>nd</sup> , etc.)      Final		
Applicant:				
Period for this Request <i>[e.g., 1/1/2000 - 12/31/2002]</i>				
Amt Rec'd Prepetition:	\$	Client Trust Acct Balance:	\$	
Previous Amounts Awarded by Court:		Fees: \$	Expenses: \$	
Previous Amounts Received:		Fees: \$	Expenses: \$	
<b>Current Request (including any Hawaii excise taxes):</b>		<b>Fees: \$</b>	<b>Expenses: \$</b>	
Effect on Plan: Will award as requested affect payments of secured and priority claims? (If yes, briefly summarize here; explain more fully in narrative.)			Yes	No
Total Plan Funding:			\$	
Estimated Amount of Payments on General Unsecured Claims - Before Award:			\$	
Amount of Award Being Requested:			\$	
Estimated Amount of Payments on General Unsecured Claims - After Award:			\$	
Professional	Position	Hourly Rate	Hours	Fees
				\$
				\$
				\$

*[Attach additional pages as necessary.]*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Applicant



**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

In re:

PROCEDURES IN CHAPTER 13  
CASES.

Administrative Order

Dated: \_\_\_\_\_

**ORDER ADOPTING CHAPTER 13 PROCEDURES**

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2083-1, the court hereby adopts the attached Chapter 13 Procedures. Unless the court orders otherwise, the provisions of these procedures apply in all Chapter 13 cases pending or commenced in, or transferred to, the District of Hawaii on and after January 1, 2005.

**DRAFT 12/13/04**

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII**

**GUIDELINES FOR CHAPTER 13 PROCEDURES**

(amended December 1, 2003 effective January 1, 2005)

**1. Scope; Definitions.** Pursuant to LBR 2083-1, the court has adopted these guidelines to govern procedures in to govern Chapter 13 cases filed in the District of Hawaii on and after December 1, 2003, and, to the extent practicable, all Chapter 13 cases then pending. These procedures apply to all Chapter 13 cases pending or commenced in, or transferred to, the District of Hawaii on and after January 1, 2005. All references to the debtor include the joint debtor, if any, and, if the debtor is represented by counsel, include the attorney for the debtor unless stated otherwise. All references to the trustee are to the Chapter 13 Standing Trustee or other trustee as appointed by the Office of the United States Trustee. All references to the clerk are to the Clerk of the Bankruptcy Court.

**MANDATORY FORMS**

**2. Mandatory Use of Forms.** The Chapter 13 petition, schedules and statement of financial affairs and proofs of claim must be prepared as prescribed by the appropriate official form, pursuant to Fed. R. Bankr. P. 1007(b)(1). The Chapter 13 plan shall conform substantially to the court-approved form (hib\_3015-1) attached hereto. All other Chapter 13 papers filed by the debtor shall conform substantially to the court-approved forms identified in these guidelines. National or local bankruptcy forms referred to in these guidelines are available for copying at the court and at the court's website: [www.hib.uscourts.gov](http://www.hib.uscourts.gov). There shall be no material variance from the mandatory court-approved forms, unless a request for modification is granted for good cause. Nothing in the court-approved forms or in these guidelines precludes a debtor from proposing, for good cause, amendments or modifications to a particular form. Additional terms and conditions not inconsistent with the court-approved forms may be contained in attachments. A memorandum of law, declaration or exhibit related to a court-approved form should be filed as a separate pleading.

**FILING AND SERVICE OF DOCUMENTS**

**3. Service of Plan.** The debtor is responsible for serving a copy of the proposed plan on the trustee, all creditors and the State of Hawaii Department of Taxation (whether or not the department is listed as a creditor in the debtor's bankruptcy schedules). Any related motions, as defined in Paragraph 4, must be included with the plan and shall be attached and served as part of the plan. As a courtesy, the clerk will serve on the above-mentioned parties a copy of the court-approved form plan and related motions *if submitted with the petition at the time of filing or if filed through the court's electronic case files ("ECF") system*, unless it is unduly burdensome to do so. Notwithstanding this policy of service of the plan by the clerk, it remains the responsibility of the debtor to ensure that service has been accomplished. If service is made by a party other than the clerk, a certificate of service must be completed and filed promptly. The clerk will not serve: (i) a plan not conforming to the court-approved form, (ii) a plan and related motions not accompanying the petition and not filed through ECF, or (iii) any amended plan not filed through ECF. The clerk will not serve documents on any creditor not listed in the original mailing matrix. Service of a plan or an amended plan later than 10 days before the first or continued meeting of creditors may be cause for continuing the meeting.

**RELATED MOTIONS**

**4. Definition.** Related motions with respect to a Chapter 13 plan are (i) motions to value collateral under 11 U.S.C. § 506(a) for the purpose of modifying the rights of holders of secured claims under 11 U.S.C. § 1322(b), and (ii) motions to avoid judicial and nonpossessory, nonpurchase-money liens under 11 U.S.C. § 522(f).

**5. Related Motions Attached as Part of Plan.** A related motion shall be made by a motion that substantially conforms to the applicable court-approved form (motion to value collateral - hib\_3015-506, or motion to avoid lien - hib\_3015-522), attached and included as part of the plan. Supporting documents such as appraisals, declarations, and legal memoranda should be filed separately and served on the trustee, lienholders and other parties with an interest in the subject property.

**6. Separate Notice of Related Motions.** Separate notice of a related motion and the opportunity to object shall be given to each creditor in interest by a notice that substantially conforms to the court-approved form (hib\_3015-5n). The notice shall state that a party objecting to the motion must file an objection within 20 days after the later of (i) the date of the notice of the conclusion of the meeting of creditors, or (ii) 20 days after service of an amended plan and related motions.

**7. Objections to Related Motions.** Any party wishing to object to a related motion must file an objection and serve it on the debtor, the trustee, and any party known to claim a secured interest in the subject collateral. Such objection must be filed within the later of (i) 20 days after the date of the notice of the conclusion of the meeting of creditors or (ii) 20 days after service of an amended plan and related motions. If an amended plan with a related motion is filed, all previously filed objections are deemed moot. If a party remains opposed to the related motion, a new objection must be filed in response. The related motion and the objection will be considered at the confirmation hearing. Absent a timely objection, the court may determine the debtor's request to value collateral or to avoid a lien without a hearing.

**8. Disposition of Related Motions.** An order confirming a plan shall dispose of related motions attached and included as part of the plan. An order disposing of the debtor's request to value collateral or to avoid a lien shall act as a final determination of the extent to which a claim is a secured claim, notwithstanding the amount indicated as secured in a creditor's proof of claim, unless the court orders otherwise. A plan will not be confirmed without a disposition of all related motions included with the plan.

## MEETING OF CREDITORS

**9. Attendance.** The debtor and the debtor's attorney, if any, shall attend the meeting of creditors convened pursuant to 11 U.S.C. § 341. If the case is a joint case, both debtors shall appear. If the debtor or the debtor's attorney fail to appear at the meeting of creditors, the trustee may continue the meeting for cause and/or file a motion to dismiss the case for non-appearance at the meeting. The trustee's motion shall be served on the debtor, the debtor's attorney and the Office of the United States Trustee, and shall state that the case will be dismissed without further notice unless an objection and request for a hearing is filed with the court and served on the trustee within 15 days after the date of filing of the motion. Absent a timely objection, the case may be dismissed without further notice upon submission by the trustee of a proposed order of dismissal. The order shall provide for a 180-day bar to refiling a subsequent petition by the debtor, pursuant to 11 U.S.C. § 109(g)(1).

**10. Evidence of Current Income.** The debtor shall provide evidence of current income (pay stubs, tax return or other equivalent documentation) to the trustee at least 10 days before the meeting of creditors. Failure to provide this evidence may result in dismissal of the case upon motion by the trustee. Dismissal may include a 180-day bar to refiling pursuant to 11 U.S.C. § 109(g)(1) if the court finds willful failure to comply with a lawful order of the court.

**11. Operation of a Business.** If the debtor is operating a business that meets 2 of the 3 following conditions: (i) the business employs 3 or more individuals, (ii) the business earns gross receipts in excess of \$10,000 per month, or (iii) the business produces net receipts that comprise 50% or more of the debtor's income reported in Schedule "I", or if the debtor is notified in writing by the trustee that the trustee has otherwise determined that business

financial reporting is required, the debtor shall submit to the trustee, at least 10 days before the meeting of creditors, the following reports required to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the desirability of such business:

- (a) Projection of average monthly income and expenses;
- (b) Evidence of appropriate business insurance;
- (c) Inventory of goods as well as a list of furniture and equipment as of the date of the filing of the petition;
- (d) Monthly income and expense statements for at least the 6 months preceding the date of the filing of the petition, signed by the debtor under penalty of perjury, including a statement regarding incurred and unpaid expenses.

Failure to submit the reports as required above may result in dismissal of the case upon motion by the trustee. Dismissal may include a 180-day bar to refiling pursuant to 11 U.S.C. § 109(g)(1) if the court finds willful failure to comply with a lawful order of the court.

## **CONFIRMATION AND OBJECTIONS TO A PLAN**

**12. Objections to Plan.** Upon the conclusion of the meeting of creditors, the clerk will serve a notice of conclusion of meeting of creditors and deadline for objections to plan on the debtor, the debtor's attorney, the trustee, and all creditors. The notice shall state that an objection to the plan or a related motion will be timely if filed with the court within the later of (i) 20 days after the date of the notice of the conclusion of meeting of creditors, or (ii) 20 days after service of an amended plan. A plan includes any related motions and will not be confirmed without a disposition of all related motions. The objection should be entitled "Objection to Chapter 13 Plan or Related Motion" and must be served by the objecting party on the debtor. If a timely objection is filed or the court determines that a hearing on plan confirmation is appropriate, the matter will be set for hearing with not less than 25 days' notice to the debtor, the debtor's attorney, the trustee, and all creditors. Nothing in this provision limits the court from setting a hearing on confirmation of a plan and determination of a related motion, notwithstanding the absence or untimeliness of any written objections.

**13. Confirmation Order.** In the absence of a timely objection to the plan or a related motion, the court may confirm the plan and determine related motions to value collateral or to avoid a lien, without a hearing. If one or more objections have been filed but are all withdrawn in writing prior to the hearing date, the matter may be removed from the calendar and determined as if no objection had been filed. Absent any objections or if, after a hearing, all objections are overruled, the trustee shall submit to the court a proposed confirmation order (hib\_3015ord), attaching the plan as an exhibit. The trustee may delegate the responsibility to prepare the order to the debtor or the debtor's attorney. The proposed order may include an amendment of the original plan made orally at the hearing on the objection to the plan or related motion, or an amendment which, in the judgment of the trustee, is not prejudicial to any creditor.

**14. Procedure Upon Denial of Plan Confirmation.** If the court sustains an objection to the proposed plan or denies a related motion to value collateral or to avoid a lien, the order will provide that the case may be dismissed unless within 15 days after the entry of the order denying confirmation: (i) the debtor files an amended plan with any related motions, or (ii) the case has been converted or the debtor has filed a motion to convert to a case under another chapter.

## AMENDMENT OF PLAN BEFORE CONFIRMATION

**15. Filing and Service of Amended Plan.** The debtor may file an amended plan at any time prior to confirmation. An amended plan shall include any related motions. The debtor is responsible for serving a copy of the amended plan as set forth in paragraph 3 of these guidelines. The debtor shall file and serve on all creditors a notice that substantially conforms to a court-approved form (hib\_3015-1a) that states the deadline for objecting to the amended plan and any related motion.

**16. Objection to Amended Plan and Related Motions.** A party wishing to object to the amended plan or any related motion attached to the amended plan shall file an objection within the later of (i) 20 days after the date of the notice of the conclusion of the meeting of creditors or (ii) 20 days after service of the amended plan. Upon the filing of an amended plan, including any related motions, all previously filed objections are deemed moot. If a party remains opposed to confirmation, a new objection must be filed in response to the amended plan.

**17. Confirmation of Amended Plan.** Absent any objections, the amended plan may be confirmed without a hearing and the trustee shall submit to the court a proposed confirmation order, attaching the amended plan as an exhibit. If the debtor files an amended plan after the scheduling of a confirmation hearing, the matter will remain on calendar but will be continued to a date certain. If there are no timely objections filed before the continued hearing date, the court may take the matter off calendar and confirm the amended plan. As an alternative to filing a written amended plan and at the discretion of the court, the debtor may amend a plan or related motion orally at the hearing in order to resolve objections. The proposed order shall include the amendment of the original plan made orally at the hearing on the objection to the plan or related motion, and may include any further amendment which, in the judgment of the trustee, is not prejudicial to any creditor.

## PLAN PAYMENTS TO TRUSTEE

**18. Plan Payments.** Plan payments to the trustee shall be made monthly by cashier's check, money order or other form acceptable to the trustee and shall commence within 30 days after the filing of the plan. Plan payments may be made pursuant to a wage order (hib\_1322a1). In the event of the debtor's default in making plan payments, the trustee may request, with 15 days' notice to the debtor and the debtor's attorney, the issuance of a wage order. Funds from plan payments will be distributed pursuant to the plan as soon as practicable after a confirmation order is entered. If the case is converted or dismissed prior to confirmation, the trustee is authorized to retain for administrative expenses \$50 of any funds being held.

## PROOFS OF CLAIM AND OBJECTIONS TO CLAIMS

**19. Need to File Proof of Claim.** A creditor must file a timely proof of claim (Form B10) in order to receive distributions under the plan. A debtor's attorney must file a proof of claim for compensation and reimbursement of expenses to be paid through plan distributions.

**20. Arrearage Portion of Secured Claim.** Notwithstanding Fed. R. Bankr. P. 3002(a), the holder of a secured claim must file a timely proof of claim in accordance with Fed. R. Bankr. P. 3002(c) in order to receive plan distributions for a prepetition arrearage or default. If the plan provides for payment of an "arrearage," the trustee shall make a distribution according to the amount stated on the proof of claim form (Form B10) as "Amount of arrearage and other charges at time case filed included in secured claim" in section 5 of the form, unless the court orders otherwise. The trustee will make no distribution on the secured portion of a claim that states the amount of the arrearage is \$0.00, none, or the like, or if the arrearage amount is left blank.

**21. Unscheduled Creditors Filing Claims.** A creditor filing a proof of claim not listed in the debtor's schedules

shall be included in an existing class under the plan according to the classification of the claim stated on the proof of claim, unless the claim is disallowed or the court orders otherwise.

**22. Scheduled Creditors Not Filing Claims.** The debtor or the trustee may file a proof of claim on behalf of a creditor, with notice to be given pursuant to Fed. R. Bankr. P. 3004 and any local rule or order of the court. A proof of claim filed on behalf of a creditor may be superseded or amended by the affected creditor.

**23. Untimely Claims.** The trustee shall not make distributions on claims filed after the time periods stated in Fed. R. Bankr. P. 3002(c) unless the court orders otherwise. A stipulation to allow an untimely claim will be considered for approval by the court without a hearing if executed by the debtor and the trustee.

**24. Trustee's Notice of Filed Claims and Intent to Make Distributions.** Within the later of (i) 30 days after the latest claims deadline stated in Fed. R. Bankr. P. 3002(c) and (ii) 60 days after the entry of the plan confirmation order, the trustee shall file and serve on the debtor and the debtor's attorney the Trustee's Notice of Filed Claims and Intent to Make Distributions. The trustee's notice shall list the claims filed and advise that distributions under the plan will be made according to the classification and amount of claims as filed, unless the court already has decided the value of collateral securing a debt, avoided a lien, or otherwise disallowed or modified a claim by specific order. The notice may state that the actual distributions will be subject to changes including, but not limited to, determinations of objections to claims, amended claims, stipulations allowing untimely claims, and awards of attorney compensation.

**25. Debtor's Duty to Examine and Object to Claims.** Upon the expiration of the claims bar date for non-governmental creditors, the debtor shall examine the claims and file an objection to any claim with which the debtor disagrees and which has not yet been determined by the court.

**26. Determination of Holder of Claim and Address for Distribution.** The trustee shall make distributions in accordance with the name and address of the claimant stated on the proof of claim, subject to any amendment, assignment, transfer, change of address, or any other information filed with the court as part of the individual case record. The trustee shall not make a distribution to a claimant or address other than that stated on the proof of claim unless the notice of a change is filed as a court document. A distribution that has been returned to the trustee as undeliverable with no forwarding or change of address filed with the court may be deemed abandoned and subject to distribution to other creditors.

**27. Claims Amended, Assigned or Transferred After the Claims Bar Date.** If, after the claims bar date prescribed by Fed. R. Bankr. P. 3002 has passed, a claim is amended, assigned or transferred, the creditor amending the claim, the assignee or the transferee shall file promptly with the court the document amending, assigning or transferring the claim.

**28. Objections to Claims.** To suspend distribution on a disputed claim, the debtor shall file and serve the objection on the claimant not later than 30 days after the filing of the trustee's notice of filed claims and intent to make distributions. Pursuant to Fed. R. Bankr. P. 3007, the objecting party shall provide at least 30 days' notice of the hearing on the objection, using a notice that substantially conforms to the court-approved form (hib\_3007-2). The notice shall advise that a response to the objection must be filed not later than 15 days before the hearing date and that absent a timely response, the court may determine the matter without a hearing. Pending a determination on an objection, the trustee shall cease making a distribution on the claim subject to objection. If the objection is overruled, at the request of the claimant or the trustee, the court may make provision for payment of any dividends not paid while the objection was pending. Nothing in this order shall prevent the debtor, the trustee or other party in interest from objecting to a claim after the deadline specified in this paragraph. However, any objection filed after the deadline shall not, if sustained, result in any order requiring the claimant to refund past amounts paid on



account of its claim, unless the court orders otherwise.

## POST-CONFIRMATION MOTIONS

**29. Trustee's Motion to Dismiss for Lack of Feasibility.** If the trustee determines from the proofs of claims actually filed that the plan is not feasible, *i.e.* there will be insufficient funds to pay, in full, administrative expenses, secured claims, priority claims and any claims placed in a special class for full payment, the trustee will file and serve a motion to dismiss for lack of feasibility. Such motion shall give notice that the debtor is required to file, within 30 days of the date of the notice, (i) an objection to a claim, which, if sustained, would ensure feasibility, or (ii) a motion to modify the confirmed plan. Failure to file an objection to a claim making the plan not feasible, or a motion to modify the plan within the 30-day period, or an overruling of the objection to claim or denial of the motion to modify the plan, shall result in dismissal of the case without further notice. Alternatively, if the trustee determines that feasibility may be satisfied by extension of the duration of the plan, but not longer than 60 months, the trustee may file a motion to extend plan.

**30. Trustee's Motion to Extend Plan.** Because of defaults in plan payments or destruction of feasibility by claims actually filed, the trustee may file a motion to extend plan, advising that the plan will be extended up to 60 months after the time the first payment was due under the original confirmed plan in order to pay, in full, administrative expenses, secured claims, priority claims and any claims placed in a special class for full payment. The trustee shall serve the motion on the debtor, the debtor's attorney, and all parties who have filed a timely proof of claim. If no objection is filed within 20 days after the filing of the motion to extend plan, the request may be granted without a hearing.

**31. Motion to Modify Confirmed Plan.** A request by the debtor to modify a plan after confirmation shall be made by filing a motion and notice that substantially conforms to the court-approved form (hib\_1329a). The motion shall describe with specificity the proposed modifications to the plan then in effect. The motion and notice shall be served promptly on the trustee, and (i) all creditors, or (ii) if filed after the deadline to file a proof of claim, those parties who have filed a proof of claim. The court may grant the motion if no objection is filed within 20 days after the filing of the motion. If no timely objection is filed, the debtor shall submit a proposed order, describing with specificity all modifications to the confirmed plan then in effect, a copy of which must be attached as an exhibit. If a timely objection is filed or if the court so directs, the debtor shall obtain a hearing date and file and serve, not less than 15 days before the hearing, a notice of hearing on the parties entitled to receive notice of the motion. A motion by a party other than the debtor to modify a confirmed plan shall be set for hearing with notice of not less than 28 days.

**32. Motion to Dismiss.** A motion to dismiss for default in plan payments or other cause, filed by the trustee pursuant to 11 U.S.C. § 1307(c), shall be served on the debtor and the debtor's attorney with not less than 15 days' notice of the hearing given to the debtor, the debtor's attorney and the Office of the United States Trustee. A motion to dismiss filed by the Office of the United States Trustee shall be served on the debtor and the debtor's attorney with not less than 15 days' notice of the hearing given to the debtor, debtor's attorney and the trustee. No written opposition to these motions need be filed. However, failure to appear at the hearing in opposition to such a motion may result in granting the request of the trustee or Office of the United States Trustee. Motions to dismiss brought by parties other than the trustee or the Office of the United States Trustee shall be served on the debtor, the debtor's attorney, the trustee and the Office of the United States Trustee, and shall be governed by LBR 9013-1, requiring 28 days' notice of the hearing on the motion to those parties and all creditors.

**33. Motion for Relief from Stay.** LBR 4001-1 governs the procedures for motions for relief from the automatic stay under 11 U.S.C. § 362 and the codebtor stay under 11 U.S.C. § 1301. If the order unconditionally permits the secured creditor to foreclose on or repossess its collateral, the trustee, as soon as practicable, shall cease making

payments to all creditors whose claims are based entirely on a secured interest in the collateral being foreclosed on or repossessed, unless the court orders otherwise.

### 34. Motion to Sell Property.

(a) Notice. The debtor may move for court approval to sell property by giving notice of the motion and the opportunity to request a hearing under LBR 9013-1(c). ~~The debtor shall serve the motion and notice on the trustee, all creditors, and any parties with an interest in the subject property.~~ The motion shall include a report as to the status of title for the subject property. The notice shall substantially conform to the court-approved form (hib\_9013-1c) and shall provide an adequate description of the relief being requested, including identification of the property, purchase price, and total amount of liens and encumbrances. The debtor shall serve the motion and notice on the trustee, the Office of the United States Trustee, and any parties with an interest in the subject property. The debtor shall also give notice of the motion to all creditors. The court may set the matter for hearing notwithstanding the absence of a timely filed objection. ~~A motion to sell property that includes a request for an award of attorney fees and expenses shall be set for hearing on not less than 28 days' notice and shall include detailed billing records.~~

(b) Debtor's Attorney Fees and Costs. The motion may include a request that an estimated amount of motion-related attorney fees and costs be paid into a client trust account, with a final award subject to court approval of a separately filed application that includes billing time records.

(c) Sales Commission. The motion may include a request for approval of payment of a commission or other fees and costs to a sales agent, auctioneer, or other professional whose employment has been approved by the court, or whose employment did not require court approval because the subject property is not property of the estate.

(d) Plan Modification. If the sale proceeds will be used to complete all remaining payments due under the confirmed plan and no plan modification is being requested except for the acceleration of such payments, the debtor is not required to file a separate motion to modify the plan.

### 35. Motion to Obtain Credit or Incur Debt.

(a) Notice. The debtor may move for court approval to obtain credit or incur debt by giving notice of the motion and the opportunity to request a hearing under LBR 9013-1(c). ~~The debtor shall serve the motion and notice on the trustee, all creditors, and any parties in interest.~~ The notice shall substantially conform to the court-approved form (hib\_9013-1c) and shall provide an adequate description of the relief being requested, including identification of the collateral, total amount of liens and encumbrances on the collateral, and the loan amount. The debtor shall serve the motion and notice on the trustee, the Office of the United States Trustee, and any parties with an interest in the collateral. The debtor shall also give notice of the motion to all creditors. The court may set the matter for hearing notwithstanding the absence of a timely filed objection. ~~A motion to obtain credit or incur debt may include a request that an estimated amount of motion-related attorney fees and costs be paid into a client trust account, with a final award subject to court approval of a separately filed application that includes itemized billing records that includes a request for an award of attorney fees and expenses shall be set for hearing on not less than 28 days' notice and shall include detailed billing records.~~

(b) Debtor's Attorney's Fees and Costs. The motion may include a request that an estimated amount of motion-related attorney fees and costs be paid into a client trust account, with a final award subject to court approval of a separately filed application that includes detailed billing time records.

(c) Plan Modification. If the loan proceeds will be used to complete all remaining payments due under the confirmed plan and no plan modification is being requested except for the acceleration of such payments, the debtor

is not required to file a separate motion to modify the plan.

(d) Ex Parte Relief. A motion by the debtor to obtain credit or incur debt may be granted without prior notice if: (1) the collateral for the new debt is property that vested in the debtor upon plan confirmation or otherwise is not property of the estate, (2) the loan proceeds will be used to satisfy all remaining payments to the trustee due under the plan, (3) any debtor's attorney's fees and costs related to the request will be paid into a client trust account, pending court approval of a separate application, and (4) the trustee does not object to the motion. [See local form hib\_364-13.]

## ATTORNEY REPRESENTATION AND COMPENSATION

**36. Representation.** Pursuant to LBR 9011-1, any attorney who is retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor in all matters arising in the case before and after confirmation. A debtor's attorney is not required to represent the debtor in an adversary proceeding but must file with the court and serve on all litigants a notice of non-representation of the debtor in the adversary proceeding.

**37. Withdrawal.** An attorney representing a debtor in a Chapter 13 case seeking to withdraw shall comply with LBR 2019-1. The request shall be served on the debtor, the trustee and the Office of the United States Trustee. A motion to withdraw shall be set for hearing on not less than 28 days' notice.

**38. Disclosure of Compensation.** An attorney representing a debtor in a Chapter 13 case shall file with the petition or within 15 days thereafter a Disclosure of Compensation of Attorney for Debtor (Form B 203). Compensation paid to attorneys for the representation of debtors shall be determined according to these guidelines and the Chapter 13 Attorney Fee Guidelines or, where applicable, the Guidelines for Compensation and Expense Reimbursement of Professionals. After the filing of the petition, a debtor's attorney shall not accept from the debtor, or from another party on behalf of the debtor, any payment for services or cost reimbursement without first obtaining a court order authorizing the fees and costs and specifically permitting direct payment of those fees and costs by the debtor or a third party.

**39. Rights and Responsibilities of Debtors and Debtors' Attorneys.** Every attorney representing a debtor in a Chapter 13 case shall file with the petition or within 15 days thereafter a statement outlining the rights and responsibilities of Chapter 13 debtors and debtors' attorneys, signed by the attorney and the debtor. An attorney who elects the expedited approval of compensation and expenses under the Chapter 13 Attorney Fee Guidelines shall use the court-approved form (hib\_2016-13r). An attorney who does not elect the expedited approval of fees through plan confirmation also is required to file this statement but may use a modified version of the form.

**40. Award and Allowance of Attorney Fees and Expenses Through Plan Confirmation.** Pursuant to LBR 2016-1(c), an attorney representing a debtor in a Chapter 13 case may seek the award and allowance of fees and reimbursable expenses as part of plan confirmation. The Chapter 13 Attorney Fee Guidelines govern such a request.

**41. Award and Allowance of Attorney Fees and Expenses Outside Plan Confirmation.** An attorney representing a debtor in a Chapter 13 case who does not elect use of the Chapter 13 Attorney Fee Guidelines shall seek the award and allowance of compensation and expenses under applicable authority including, without limitation, 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, LBR 2016-1, and these guidelines. The attorney shall maintain a client trust account, deposit and hold any funds received from or on behalf of the debtor in the trust account pending an award and allowance of fees by the court, maintain detailed billing records, file an application for compensation and reimbursement of expenses, and file a summary sheet that substantially conforms to the court-approved form (hib\_2016-1b13). The application for compensation shall disclose any effect which the allowance of the requested fees and expenses may have upon the plan and payments to creditors.

**42. Payment of Attorney Fees and Expenses Through Plan Distributions.** Pursuant to 11 U.S.C. § 1326(b), attorney fees and expenses allowed by the court will be paid before or at the same time of each payment to creditors. Allowed attorney fees and expenses shall be paid first from any funds being held in a client trust account before distributions from funds being held by the trustee. The Chapter 13 Attorney Fee Guidelines govern the payment of attorney fees and expenses awarded and allowed pursuant to those guidelines. For the payment of attorney fees and expenses awarded and allowed outside the Chapter 13 Attorney Fee Guidelines, the trustee shall reserve 50% (or such other amount as the court orders) of the total plan payments received from the debtor prior to the entry of the confirmation order (“50% reserve”). If the debtor’s attorney fails to file an application for compensation and reimbursement for expenses within 60 days after the date of entry of the confirmation order or as the court otherwise orders, the trustee shall distribute the 50% reserve to creditors according to the plan. If the debtor’s attorney files a timely application, the trustee will continue holding the 50% reserve pending a determination of the application. Upon the entry of an order allowing attorney fees and expenses, unless the court for good cause orders otherwise, the trustee shall pay the attorney the 50% reserve if so entitled and shall disburse until the fee is paid in full the lesser of 50% of each monthly plan payment after confirmation or \$250 per month of each plan payment after confirmation. For further awards of attorney fees and expenses, the trustee shall disburse monthly to the attorney the lesser of 50% of each monthly plan payment or \$250 of each plan payment, commencing with the first distribution period after the entry of the order allowing the further fees and expenses, unless the court for good cause orders otherwise.

Attorney or Party Name, Address, Phone, Fax, Email:	For court use only	
	<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>	
In re (Debtor(s)):	Case No.:	Chapter 13
	Non-hearing motion	
<p align="center"><b><u>EX PARTE MOTION TO INCUR DEBT</u></b></p> <p align="center"><i>[Notice and hearing not required in Chapter 13 case if all conditions on the page below are satisfied.]</i></p>		
Collateral:	Loan amount:	

An order is hereby requested authorizing the Debtor(s) to incur new debt for the purpose of completing the remaining payments due under the Chapter 13 plan and to modify the plan to provide for an accelerated lump sum distribution. The undersigned alleges the following.

1. The new debt being incurred is secured by property that revested in the debtor(s) upon confirmation of the Chapter 13 plan or otherwise is not property of the estate.
2. The loan proceeds being obtained will be sufficient to pay all remaining payments to the Trustee under the Chapter 13 plan, as shown on page 2 of this motion.
3. Any loan proceeds designated to pay compensation and expenses to the attorney for the Debtor(s) shall be subject to court approval of a separate application with detailed billing time records. Pending approval, loan proceeds may be deposited into a client trust account.
4. The Chapter 13 Trustee has no objection to this request, as shown on page 2.

## Ex Parte Motion to Incur Debt (Chapter 13) - Worksheet

(All figures entered are good faith estimates.)

1	Loan Amount		\$
2	Existing liens to be paid from proceeds		
a)	_____	\$ _____	
b)	_____	\$ _____	
c)	_____	\$ _____	
3	Loan costs and other items payable at closing ( <u>except</u> for debtor's attorney fees and costs)	\$	
4	Add amount(s) in line 2 and line 3		\$
5	Subtract line 4 from line 1		\$
6	Total remaining payments due under plan (as of estimated date of closing)	\$	
7	Debtor's attorney fees and costs to be paid from proceeds (separate application required)	\$	
8	Add line 6 and line 7		\$
9	Subtract line 8 from line 5 (surplus to Debtor(s))		\$

Other information (if any) to support this request [*attach additional pages if necessary*]:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Debtor / Attorney

No objection:

\_\_\_\_\_  
Joint Debtor / Attorney

\_\_\_\_\_  
Chapter 13 Trustee



Attorney or Party Name, Address, Phone, Fax, Email:	For court use only	
	<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>	
In re (Debtor(s)):	Case No.:	Chapter 13
	Related Docket No.:	

**ORDER GRANTING MOTION TO INCUR DEBT**

There being no objection by the Chapter 13 Trustee and for good cause,

IT IS HEREBY ORDERED that the motion by the Debtor(s) to incur debt for the purpose of completing all remaining payments due under the confirmed Chapter 13 plan is GRANTED as follows.

1. The Debtor(s) may incur new debt by obtaining a loan in the following amount:  
\$\_\_\_\_\_.
2. After paying off existing liens and encumbrances, loan proceeds of: \$\_\_\_\_\_ to complete remaining payments due under the Chapter 13 plan shall be paid to:  
Howard M.S. Hu  
Chapter 13 Trustee  
1132 Bishop Street, Suite 301  
Honolulu, Hawaii 96813.
3. Loan proceeds to pay fees and costs of the attorney for the Debtor(s) shall be disbursed to the attorney in the amount below for deposit in the attorney's client trust account. These funds shall not be withdrawn from the trust account pending court approval of the attorney's application for compensation and reimbursement for expenses.  
Attorney Fees and Costs: \$\_\_\_\_\_.
4. Other:

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

Attorney or Party Name, Address, Phone, Fax, Email:		For court use only	
<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>		Case No.:	Chapter 13
In re (Debtor(s)):		<u>Hearing:</u> Date: Time:	<u>Non-Hearing:</u> (Hearing will be set if objection filed)
<b><u>MOTION TO APPROVE SALE (Chapter 13 Case)</u></b>			
If checked, motion includes:		Use of sale proceeds to pay compensation and expenses of Debtor's attorney Approval of sales commission or other compensation for sales agent/auctioneer Modification of confirmed plan to accelerate payments (lump sum distribution)	
Subject Property:		Purchase Price:	

An order is hereby requested approving the sale of the above-described property and, if applicable, approving requests for compensation and plan modification. The undersigned alleges as follows.

I. Property of the Estate	The subject property is property of the estate, or  The subject property is property that revested in the Debtor(s) upon plan confirmation or otherwise is not property of the estate.
II. Use of Sale Proceeds	The proceeds of the sale will be sufficient to complete all remaining plan payments (lump sum distribution as a plan modification), or  Debtor(s) will continue to make payments in accordance with the plan.
III. Sales Agent / Auctioneer Commission / fees: \$ _____	Name: _____  Court approval required - employment order dated: _____  Court approval of employment was not required (subject property is not property of the estate)
IV. Attorney Fees/Costs \$ _____	Estimated fees and costs related to this motion shall be paid from sale proceeds and deposited in a client trust account pending further approval, or  No request is made concerning attorney fees and costs in this motion.

## Motion to Sell Property (Chapter 13) - Worksheet

(All figures entered are good faith estimates.)

1    Purchase price		\$
2    Existing liens to be paid from proceeds		
a) _____	\$ _____	
b) _____	\$ _____	
c) _____	\$ _____	
3    Escrow costs and other items payable at closing (except for Debtor's attorney fees and costs)	\$	
4    Add amount(s) in line 2 and line 3		\$
5    Subtract line 4 from line 1		\$
6    Total remaining payments due under plan (as of estimated date of closing)	\$	
7    Debtor's attorney fees and costs to be paid from proceeds (separate application required)	\$	
8    Add line 6 and line 7		\$
9    Subtract line 8 from line 5 (surplus to Debtor(s))		\$

*[Attach a declaration with documentary support such as a title report and DROA, or UCC-1 and purchase and sale agreement. A memorandum of law is not required but may also be attached.]*

Other information (if any):

Dated: \_\_\_\_\_

\_\_\_\_\_  
Debtor / Attorney

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joint Debtor / Attorney

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

In re:

PROCEDURES REGARDING  
RELIEF FROM THE AUTOMATIC  
STAY AND THE CODEBTOR STAY.

Administrative Order

Dated: \_\_\_\_\_

**ORDER REQUIRING FILING OF DECLARATION FOR ENTRY OF  
ORDER GRANTING BY DEFAULT MOTION FOR RELIEF FROM STAY**

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and in furtherance of the provisions of the Servicemembers Civil Relief Act of 2003,

IT IS HEREBY ORDERED that a party requesting the entry of an order granting relief from the automatic stay or the codebtor stay pursuant to LBR 4001-1(a)(3)(B) shall file a declaration stating whether the respondent is or is not in military service or whether the moving party is unable to determine the respondent's military status. The declaration shall substantially conform to the court-issued form **Declaration for Entry of Order Granting by Default Motion for Relief from Stay (hib\_4001-1dec)**, attached hereto as an exhibit. The filing of this declaration, which identifies the parties on whom the proposed order has been served, shall satisfy the requirement under LBR 4001-1(a)(3)(B) that the proposed order be accompanied by a certificate showing service of a copy of the proposed order on the same parties required to be served the underlying motion. The requirement to file the above-

described declaration is effective January 1, 2005.

**DRAFT 12/13/2004**  
United States Bankruptcy Judge

Attorney or Party Name, Address, Phone, Fax, Email	[for court use only]		
	<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII</b>		
	Case No.	Chapter	
In re <i>[Debtor(s)]</i> :	Scheduled Hearing: Date: Time:		
<b><u>DECLARATION FOR ENTRY OF ORDER GRANTING BY DEFAULT MOTION FOR RELIEF FROM STAY</u></b>			
Moving Party:			
Relief from Stay re: <i>[identify subject matter]</i>			
Related Docket No.:		Objection Deadline:	

**The undersigned declares under penalty of perjury** that the statements below are true and correct and requests that the court enter an order granting the motion for relief from stay filed by the above-named party.

1. I am or represent the above-named party and have personal knowledge of the facts stated in this declaration.
2. A motion seeking relief from stay under 11 U.S.C. § 362 and/or § 1301 was filed by the above-named party in accordance with Fed. R. Bankr. P. 4001, LBR 4001-1, and any other applicable rules.
3. Notice of the motion and a hearing date and time for its consideration was given promptly to the debtor(s) and/or all parties against whom relief is sought in accordance with Fed. R. Bankr. P. 4001, LBR 4001-1, and any other applicable rules, as evidenced by a certificate of service filed in this case.
4. Said notice advised the debtor(s) and/or all parties against whom relief is sought that the failure to file a response opposing the motion by the deadline noted above may result in the court entering an order granting the relief requested.
5. A copy of the proposed order granting the motion has been served on the parties identified below by first class mail postage prepaid, hand delivery (“HD”), or electronic transmission through the court’s facilities (“ECF”).



Date of Service of Proposed Order ( <i>not less than 12 days after motion filed</i> ):		

[Attach additional pages if necessary.]

6. The court docket in this case indicates that no response in opposition to the motion has been filed (or that any response filed in opposition to the motion was subsequently withdrawn), nor have I received any opposition statement.
7. The Servicemembers Civil Relief Act of 2003 (“SCRA”) does not prohibit the entry of an order by default based on the following.

The respondent is not an individual.

No individual against whom relief is sought is a servicemember in military service based on a review of the record in this case or based on the following information:

One or more individuals against whom relief is sought is a servicemember in military service but any such individual is represented by an attorney or SCRA protections do not apply for the reason(s) stated in an attached memorandum.

I am unable to determine whether or not an individual against whom relief is sought is a servicemember in military service and understand that the court may require the posting of a bond before entering an order granting the relief requested.

Dated: \_\_\_\_\_